IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Misc. Application No. 149 of 2001
(Old No. 4911/99)

1. Jag Mohan Singh son of Trilok Singh.
2. Manoher Singh son of Trilok klSingh
   Both residents of Kandai via Nand Prayag District Chamoli.

….. Applicants.

Versus

1. The State of U.P.
2. Sri Ambal Singh son of Sri Sen Singh, resident of Gandasu Patwari, tehsil Chamoli, district Chamoli.

…… Opp.parties.

Sri .P.S. Danu, learned counsel for the applicants.t.
Sri Rajeev Mohan Birkhani, learned A.G.A.. for the State.

HON'BLE PRAFULLA C. PANT, J.

1. By means of this petition moved under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), the petitioners have sought direction quashing the proceedings of criminal case No.175 of 1997, State Vs Jagmohan Singh and others, pending in the court of Judicial Magistrate, Karn Prayag, district Chamoli.

2. Heard learned counsel for the parties.

3. Brief facts of the case are that an F.I.R. was lodged on 04.05.1990 with Patwari Magroli by complainant Ambal Singh. In said report the complainant alleged that his 300 wood pieces have been stolen from Malla Chirpak. It is alleged by the complainant that theft was committed some time in the intervening night of 3rd and 4th of May, 1990. The report was lodged at 7.20 a.m. on 04.05.1990 against unknown persons under section 379 Indian Penal Code, 1860 which was registered as crime No.2 of 1990.

4. It appears that the investigation started on said complaint.

5. Under section 468 Cr. P.C.,a period of limitation has been provided for taking cognizance of the offences. In clause (c) three years period is the period of limitation in respect of the offences which are punishable not exceeding three years. As such, the charge sheet in aforesaid crime should have been filed within a period of three years in aforesaid crime. However, provisions of Section 468 Cr.P.C. are subject to the provisions contained in section 473 of said Code which reads as under:

“473. Extension of period of limitation in certain cases –

Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may take cognizance of an offence after the expiry of period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice”.

6. From the above provision it is clear that even after expiry of period of limitation contained in Section 468 Cr.P.C., the court can take cognizance of an offence on either of the two conditions:

(a) on being satisfied that delay has properly been explained, or

(b) it is necessary to take cognizance in the interests of justice.

7. From perusal of the charge sheet which is Annexure 2 to the affidavit filed with the present petition, shows that the charge sheet was filed on 31st of August, 1996, as such the charge sheet is time bared by 3 years 2 months and 25 days. From Annexure 3 to the affidavit it is also clear that vide order dated 19.04.1997 the Judicial Magistrate passed an order whereby it recorded its satisfaction relating to explanation given for delay in filing the charge sheet and granted leave to prosecute the accused. Said order dated 19.04.1997 shows that before the delay is condoned by the Magistrate in taking the cognizance it observed that it has seen the case diary and necessary papers including the application filed by the Investigation Officer for condonation of delay. A copy of said application moved by prosecution is filed before this Court as Annexure 1 to the counter affidavit filed by the State. It shows that reason for filing a charge sheet after expiry of limitation is that one of the accused, namely, Dilwar Singh could not be arrested even after efforts made for his arrest. This application is dated 01.04.1997 moved by Inspector, C.B. C.I.D. who investigated the crime. Annexure 1 to counter affidavit further shows that this application was presented by Prosecuting Officer seeking condonation of delay for filing charge sheet under section 473 of Cr.P.C.

8. From the above application dated 01.04.1997 read with order dated 19.04.1997 passed by Judicial Magistrate this Court is of the view that the Magistrate has taken cognizance after satisfying itself that the delay has sufficiently been explained by the prosecution. This Court in its jurisdiction under section 482 Cr.P.C. can not see factual satisfaction of the Magistrate, unless the same is perverse. There is no illegality committed by the Magistrate in taking the

cognizance in the above circumstances. Therefore, the petition under section 482 Cr.P.C. is liable to be dismissed.

9. Accordingly, the petition under section 482 Cr.P.C. is dismissed. Interim stay order dated 08.10.1999 is hereby vacated. The Court concerned is directed to proceed with the trial of the case.

(Prafulla C. Pant, J)

13.09.2006.
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